

REMARKS

Claims 11 and 58 are currently amended. No new matter is added. Reconsideration of the pending claims is requested in light of the amendments above and remarks below. Entry of this amendment is proper as it places the case in better condition for appeal.

I: The Objections to Claims 11 and 58

Claims 11 and 58 are currently amended. Reconsideration is urged.

II: The Rejection of Claims 1-8, 10, 11, 20-23, 57, 64-73 and 76-82 under 35 U.S.C. 112, 2nd (indefinite).

In the Office action, claims 1-8, 10, 11, 20-23, 57, 64-73 and 76-82 were rejected under 35 U.S.C. 112, second paragraph, as indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Examiner contends that 60% identity to SEQ ID NO: 28 does not explain if "10 amino acid residues that correspond to the 60% identity is 'contiguous' or the amino acid residues are present in a 'random manner.'" Applicants respectfully traverse.

The essential inquiry for determining indefiniteness is whether the claims set out and circumscribe a particular subject matter with a reasonable degree of clarity and particularity. Definiteness must be analyzed in light of the claim interpretation that would be given by one possessing the ordinary skill in the pertinent art at the time the invention was made. (M.P.E.P. 2173.02) One of ordinary skill in the art would certainly understand that the phrase "having at least 60% sequence identity to SEQ ID NO: 28" means that the percent identity between two polypeptides should be determined to be 60% or more. One of skill in the art would further understand how to make the requisite comparison especially in light of the straightforward understanding of sequence identity. The Examiner's confusion is difficult to understand. The Examiner's statement that "if the 10 amino acids residues that corresponds to the SEQ ID NO: 28 is present in a random order then the claim as recited encompasses innumerable number of polypeptides" suggests that one of skill in the art would be unclear as to which polypeptides fall within 60% sequence identity. However, the specification clearly sets out suitable programs for making any necessary determination on page 9, for example reference is made to a suitable computer program such as the Gap program of the University of Wisconsin Genetic Computing Group. The specification further explains percent identity is calculated in relation to polypeptides whose sequence has been aligned optimally, and includes a reference to a

suitable alignment program. Applicants respectfully submit the claim language is clear. Reconsideration is urged.

III. The Rejection of Claims 1-8, 10, 11, 20-23, 57, 58 and 64-82 under 34 U.S.C. 102(e)

Claims 1-8, 10, 11, 20-23, 57, 58 and 64-82 stand rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Application No. 2006/0241027 (hereinafter referred to simply as "Hauser"). This rejection is traversed.

Applicant can overcome a 102(e) rejection by relying on his international filing date and/or his 119 priority date as long as the priority application and/or the international application support what is claimed in the US application. *In re Gosteli*, 10 U.S.P.Q. 2d 1614, 1615 (Fed. Cir. 1989).

Here, the Examiner based the rejection on Fig. 2 and SEQ ID NO: 37 of Hauser. However, this sequence was not included in U.S. 60/355,547 to which Hauser claims priority. The Hauser priority Application (copy attached hereto) does not include SEQ ID NO: 28 of the present disclosure. Conversely, the sequence of the present disclosure was disclosed in the priority application to the instant Application, namely GB 0217033.0 (U.K. Application filed on 23 July 2002). See e.g. Fig. 1 of GB 0217033.0 (copy attached hereto). Applicants are relying on the priority claim of the present disclosure. Reconsideration is urged, as the claimed invention was not in the priority document of the primary reference and thus cannot be regarded as prior art as of that application's filing date.

IV. Conclusion

In view of the above, it is respectfully submitted that all claims are in condition for allowance. Early action to that end is respectfully requested. The Examiner is hereby invited to contact the undersigned by telephone if there are any questions concerning this amendment or application. Should any additional fees be due, the USPTO is authorized to charge the deposit account of Novozymes North America, Inc., i.e., deposit account no. 50-1701.

Respectfully submitted,

Date: February 3, 2010

/Michael W. Krenicky Reg. # 45411/
Michael W. Krenicky, Reg. No. 45,411
Novozymes North America, Inc.
500 Fifth Avenue, Suite 1600
New York, NY 10110
(212) 840-0097